

OI Assessment Report 202100568 – ContainerCo (NZL) Limited

Ki / To: Andi Hulse
 Mai / From: Martin Carter

Rā / Date: 21 June 2024
 Rā Mutunga/ Deadline: 11 July 2024

Pūtake/Purpose

We seek your decision on an application for a variation of conditions of consent under section 27 of the Overseas Investment Act 2005 (**Act**).

Summary

Applicant	ContainerCo (NZL) Limited New Zealand 50%, People's Republic of China 22.76%, Various 27.25%
Investment	Acquisition of sensitive land
Land/Assets	Approximately 12.1606 hectares of land at 297 Te Puna Station Road, Te Puna, Bay of Plenty
Variation	Special Conditions 1, 2 and 3 – being extensions of time to allow time to obtain resource consents

The Applicant is a shipping container company ultimately owned by Kenneth Harris, a New Zealand citizen and China COSCO Shipping Corporation Limited. The Applicant was granted consent on 17 October 2022 to a freehold interest in approximately 12.1606 hectares of land located at 297 Te Puna Station Road, Te Puna, Bay of Plenty and to acquire 50% of the ordinary shares in Te Puna Industrial Limited (**TPIL**), which had an interest in the land under the Benefit to New Zealand test – substantial and identifiable benefit (**Consent**) to develop a semi-automated container park.

The conditions of consent required the Applicant to:

- start construction of the container park by [s 9(2)(b)(ii)]
- introduce capital expenditure in three stages, the first by [s 9(2)(b)(ii)] the second by [s 9(2)(b)(ii)] and the third by [s 9(2)(b)(ii)]
- purchase and install an all-electric overhead gantry crane system by [s 9(2)(b)(ii)]
- complete construction of the container park by [s 9(2)(b)(ii)] ; and,
- integrate the terminal operating system into the completed all-electric overhead gantry crane system by [s 9(2)(b)(ii)]

- f. submit reports by [s 9(2)(b)(ii)]

The Applicant seeks to vary the conditions of the Consent to extend the timeframes for fulfilling the conditions as follows:

- a. start construction of the container park by [s 9(2)(b)(ii)]
- b. introduce capital expenditure in three stages, the first by [s 9(2)(b)(ii)] the second by [s 9(2)(b)(ii)] and the third by [s 9(2)(b)(ii)]
- c. purchase and install an all-electric overhead gantry crane system by [s 9(2)(b)(ii)]
- d. complete construction of the container park by [s 9(2)(b)(ii)] ; and,
- e. integrate the terminal operating system into the completed all-electric overhead gantry crane system by [s 9(2)(b)(ii)]
- f. submit two further reports by [s 9(2)(b)(ii)] and [s 9(2)(b)(ii)]

Timing

A decision is required by 24 June 2024 to comply with the expectation in the Ministerial Directive Letter¹ that the majority of consent decisions are made within half the prescribed assessment timeframe.²

Decision

1. For the reasons set out in this report, I **grant a variation** of the conditions of consent to the varied conditions in **Attachment 1**

[s 9(2)(a)]

Andi Hulse

Leader – Assessment Capability (Overseas Investment - LINZ)

Date: 24 / 06 / 2024

¹ Ministerial Directive Letter dated 6 June 2024.

² The assessment timeframe for this application is 30 working days.

A. Application of the Act

2. Section 27 of the Act provides that a consent granted under the Act may be varied with the agreement of the consent holder, and that conditions of consent may be:
 - varied or added to with the agreement of the Consent Holder, or
 - revoked.
3. Conditions which the Act required to be imposed (for example in relation to residential outcomes) may be varied but may not be revoked.
4. The Act does not spell out what the decision-maker must take into account in considering whether to vary a consent. Applying general principles of administrative law, the discretionary power should be exercised reasonably, and consistently with the purpose of the Act³.

B. Assessment

5. The Applicant has requested that Special Conditions 1,2,3 and the Reporting Condition 1 are varied to extend the timeframes as tracked in the Proposed Varied Decision in **Attachment 1**.
6. The Applicant submits that a variation is required because of delays in the resource consenting process.
7. The Applicant requires resource consent to develop the site and commence operations. The consent applications were lodged with the relevant consenting authorities, being the Western Bay of Plenty District Council (**WBOPDC**) and the Bay of Plenty Regional Council (**BOPRC**) (**collectively, Councils**) in January 2022.
8. The local community submitted a petition against the Applicants project, containing over 1500 signatures, to the Council's.⁴
9. Requests for information were received from the Council's in March 2022 and from March 2022 – December 2022 the Applicant engaged a civil engineering firm to address the information required.
10. Meanwhile, in respect of its own resource consent applications, in November 2022 the Applicant met with representatives from Pirirakau hapu who indicated it sought no heavy vehicle use.
11. Between 27 January 2023 and 2 February 2023 the Auckland Anniversary weekend floods caused damage to Station Road near the Wairoa River. The damage was exacerbated between 5 – 11

³ Section 3 of the Act:

(1) *The purpose of this Act is to acknowledge that it is a privilege for overseas persons to own or control sensitive New Zealand assets by—*

(a) *requiring overseas investments in those assets, before being made, to meet criteria for consent; and*
(b) *imposing conditions on those overseas investments.*

(2) *This Act also has the purpose of managing certain risks, such as national security and public order risks, associated with transactions by overseas persons.*

⁴ <https://www.sunlive.co.nz/news/285754-te-puna-community-stressed-about-container-depot.html>

February 2023 by Cyclone Gabrielle and the connection of State Highway 2 to Station Road was closed and is unlikely to operate as it formerly did. Pirirakau hapu approached the WBOPDC Council on this matter resulting in all planned industrial traffic having to use the Te Puna/Te Puna Station Road intersection. A long-term solution is still undecided but is expected in late 2024.

12. Between March 2023 – August 2023 the Applicant engaged with the Council's various requests for information. In May 2023 the Applicant's civil engineers (**WSP**) declared a conflict of interest and withdrew from the project. New civil engineers (Harrison Grierson) were appointed to address Council's stormwater and floodwater concerns.
13. The Applicant decided to publicly notify the application to obtain a yes or no consent decision and the consent application was publicly notified on 22 September 2023 with a hearing set down for March 2024.
14. The Applicant became aware receiving a resource consent depends on Council's view of the Te Puna/Te Puna Station Road intersection. The hearing has been rescheduled for 9 July 2024 to allow the Applicant time to commence matters such as construction investigation and costings information as necessary to offer the Council as part of a consent package. It is possible an appeal may be required so the timeframe will be exceeded further, and the Applicant will be unable to meet the requirement to commence construction by [s 9(2)(b)(ii)]
15. Under Special Conditions 1-2, a 3 year extension to the start date, capital expenditure stages and completion dates are required to accommodate obtaining the consents.
16. Under Special Condition 3, a 7 year extension to purchase and install an all-electric overhead gantry crane system and integrate it into the terminal operating system is required as the Applicant cannot install the crane until the facility has been completed, which will be in [s 9(2)(b)(ii)]. The crane must then have its own separate resource consent and the crane must be procured, assembled and then integrated into the facility which is estimated to be completed in [s 9(2)(b)(ii)]
17. While the timeframes requested are significant, LINZ considers them to be justified in the circumstances.
18. LINZ accepts the Applicant's reasons for the need for a variation and considers the variation should be granted in the circumstances because:
 - The variation requested is reasonable and consistent with the purpose of the Act.
 - The changes do not affect the criteria considered under the original consent (they provide further time for the Applicant to comply with the Special Conditions).
 - The circumstances that require the variation relate to delays outside of the Applicant's control.
 - The Applicant is actively engaging with the Council's consent processes to progress this investment.
 - This variation provides the Applicant sufficient time to meet the special conditions outlined in the varied notice of decision.

C. Conclusion

19. We recommend that the conditions of consent be varied as set out in the Proposed Varied Decision in **Attachment 1**.
20. We refer you to **Attachment 1** to review the Proposed Varied Decision and from page 2 of this report to record your decision.

[s 9(2)(a)]

Martin Carter
Customer Regulatory Specialist
Overseas Investment – LINZ
20 June 2024

Attachments

1. Proposed Varied Decision

Released under the Official Information Act 1982

ATTACHMENT 1 PROPOSED VARIED DECISION

Consent for Overseas Person to Acquire Sensitive New Zealand Land

Read this consent carefully - you must comply with all the conditions. If you do not, you may be required to dispose of the land and/or be subject to fines or other penalties.

Consent

Decision date: 17 October 2022

Varied decision date: 24 June 2024

The following people have been given the following consent:

Case	202100568
Retrospective Consent	Retrospective consent for a series of steps resulting in Te Puna Industrial Limited's acquisition of the Land and ContainerCo (NZL) Limited's acquisition of a leasehold interest in the ContainerCo Premises.
Consent	ContainerCo (NZL) Limited may acquire the Asset subject to the Conditions set out below.
Consent holder/s	ContainerCo (NZL) Limited (New Zealand company number 1368075) And Te Puna Industrial Limited (New Zealand company number 8185315) We will also refer to each Consent holder and the Consent holders together as you .
Asset	Ordinary shares representing 50% of the ordinary shares in Te Puna Industrial Limited (New Zealand company number 8185315), which has an interest in the Land.

Land	Approximately 12.1606 hectares of land located at 297 Te Puna Station Road, Te Puna, Bay of Plenty, contained in Record of Title 33275 (South Auckland).
Timeframe	You have until 30 September 2023 to acquire the Land.

Conditions

Your Consent is subject to the Special conditions, Standard conditions and Reporting conditions (Conditions) set out below. You must comply with them all. Be aware that if you do not comply with the Conditions you may be subject to fines or other penalties, and you may also be required to dispose of the Asset or the Land.

In the Consent and the Conditions, we refer to the Overseas Investment Office as **OIO, us or we**.

Act means the Overseas Investment Act 2005.

Business Park means Te Puna Industrial Limited's proposed business park development on the Land (excluding the ContainerCo Premises) as detailed in the final Investment Plan, which contains an extract from the Western Bay of Plenty District Council's structure plan for Te Puna Business Park dated 6 February 2013. (refer annex one)

Container Facility means an area of land principally used (or to be used) for manufacturing, repairing, cleaning, processing or storing containers.

Te Puna Container Facility means the proposed Container Facility and hub for the Consent holder's regional operations to be built on the ContainerCo Premises.

Development Spending means the spending of money, in accordance with the Investment Plan, on the Land through a mixture of direct investment, investment through Te Puna Industrial Limited, and bank funding.

New Technology means an all-electric overhead gantry crane system currently under development by the Consent holder and linked to the Consent holder's newly developed terminal operating system, creating a semi-automated Container Facility.

Regulations means Overseas Investment Regulations 2005.

Any term or expression that is defined in the Act or Regulations and used, but not defined, in this consent has the same meaning as in the Act or Regulations.

Special conditions

You must comply with the following **special conditions**. These apply specifically to this Consent and were considerations that particularly influenced us to give consent:

Details	Required date
Special condition 1 – Must operate the Te Puna Container Facility and Business Park	
<p>You must:</p> <ul style="list-style-type: none"> (a) start construction of the Te Puna Container Facility and Business Park; (b) complete construction of the Te Puna Container Facility and Business Park; and (c) operate the Land as a Container Facility and as a Business Park. <p>If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Asset or your interest in the Land.</p>	<div style="background-color: black; color: red; padding: 2px;">[s 9(2)(b)(ii)]</div> <div style="background-color: black; height: 15px; margin: 2px;"></div> <div style="background-color: black; color: red; padding: 2px;">[s 9(2)(b)(ii)]</div> <div style="background-color: black; height: 15px; margin: 2px;"></div> <ul style="list-style-type: none"> (c) Once construction is completed, at all times.
Special condition 2 – Introduce capital expenditure into New Zealand	
<p>You must undertake at least [s 9(2)(b)(ii)] of Development Spending:</p> <ul style="list-style-type: none"> (a) [s 9(2)(b)(ii)] on developing either or both of the Te Puna Container Facility and the Business Park, (b) [s 9(2)(b)(ii)] on developing either or both of the Te Puna Container Facility and the Business Park. (c) [s 9(2)(b)(ii)] on developing either or both of the Te Puna Container Facility and the Business Park. <p>If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Asset or your interest in the Land.</p>	<div style="background-color: black; color: red; padding: 2px;">[s 9(2)(b)(ii)]</div> <div style="background-color: black; height: 15px; margin: 2px;"></div> <div style="background-color: black; color: red; padding: 2px;">[s 9(2)(b)(ii)]</div> <div style="background-color: black; height: 15px; margin: 2px;"></div> <div style="background-color: black; height: 15px; margin: 2px;"></div> <div style="background-color: black; height: 15px; margin: 2px;"></div> <div style="background-color: black; height: 15px; margin: 2px;"></div> <div style="background-color: black; height: 15px; margin: 2px;"></div> <div style="background-color: black; height: 15px; margin: 2px;"></div> <div style="background-color: black; height: 15px; margin: 2px;"></div> <div style="background-color: black; height: 15px; margin: 2px;"></div>
Special condition 3 – Introduce New Technology into New Zealand	

<p>(a) You must purchase and install the all-electric overhead gantry crane system on the Te Puna Container Facility.</p> <p>(b) You must integrate the terminal operating system into the completed all-electric overhead gantry crane system on the Te Puna Container Facility.</p> <p>If you do not comply with this condition, Standard Condition 6 will apply and we may require you to dispose of the Asset or your interest in the Land.</p>	<p>(b) (x)(i) [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p>Special condition 4 – Report on investments in a Container Facility</p>	
<p>You must notify us if the Consent holder acquires any interest in a Container Facility, or land acquired to develop or further develop a Container Facility in New Zealand.</p>	<p>At all times</p>

Standard conditions

You must also comply with the **standard conditions** set out below. These apply to all overseas people who are given consent to acquire sensitive New Zealand land, including you:

Details	Required date
<p>Automatic Condition: National Interest</p>	
<p>You must not, in relation to the Asset or the Land, act or omit to act with a purpose or an intention of adversely affecting national security or public order.</p>	<p>At all times</p>
<p>Standard condition 1: acquire the Asset</p>	
<p>You must acquire the Asset:</p> <ol style="list-style-type: none"> by the date stated in the Consent. If you do not, your Consent will lapse or become invalid and you must not acquire the Land, and using the acquisition, ownership and control structure you described in your application. <p>Note, only you – the named Consent holder – may acquire the Asset, not your subsidiary, trust or other entity.</p>	<p>As stated in the Consent</p>

Standard condition 2: tell us when you acquire the Asset	
<p>You must tell us in writing when you have acquired the Asset. Include details of:</p> <ol style="list-style-type: none"> 1. the date you acquired the Asset (Settlement), 2. consideration paid (plus GST if any), 3. the structure by which the acquisition was made and who acquired the Asset, and 4. copies of any transfer documents and Settlement statements. 	<p>As soon as you can, and no later than two months after Settlement</p>
Standard condition 3: allow us to inspect the Land	
<p>Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions.</p> <p>We will give you at least two weeks' written notice if we want to do this.</p> <p>You must then:</p> <ol style="list-style-type: none"> 1. Allow a person we appoint (Inspector) to: <ol style="list-style-type: none"> (a) enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (Inspection), (b) remain there as long as is reasonably required to conduct the inspection, (c) gather information, (d) conduct surveys, inquiries, tests and measurements, (e) take photographs and video records, and (f) do all other things reasonably necessary to carry out the Inspection. 2. Take all reasonable steps to facilitate an Inspection including: <ol style="list-style-type: none"> (a) directing your employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection, 	<p>At all times</p>

<p>(b) being available, or requiring your employees, agents, tenants or other occupiers to be available, at all reasonable times during an Inspection to facilitate access onto and across the Land. This includes providing transport across the Land if reasonably required.</p> <p>3. During an Inspection:</p> <p>(a) we will not compel you and your employees, agents, tenants or other occupiers to answer our questions or to let us look at, copy or take away documents,</p> <p>(b) our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection.</p>	
<p>Standard condition 4: remain not unsuitable to invest in New Zealand</p>	
<p>You, and to the extent that you are not an individual, the Individuals Who Control You must remain not unsuitable to own or control the Assets in accordance with section 18A(1) of the Act.</p> <p>The Individuals Who Control You are individuals who:</p> <p>(a) are members of your governing body,</p> <p>(b) directly or indirectly, own or control more than 25% of you or of a person who itself owns or controls more than 25% of you, and</p> <p>(c) are members of the governing body of the people referred to in paragraph (b) above.</p>	<p>At all times</p>
<p>Standard condition 5: tell us about changes that affect you, the people who control you, or people you control</p>	
<p>You must tell us in writing if any of the following events happens to any of the Consent holders:</p> <ol style="list-style-type: none"> 1. You become aware that you and/or any Individual Who Controls you establishes any of the investor test factors listed in section 18A(4) of the Act. 2. You cease to be an overseas person or dispose of all or any part of the Asset or the Land. 3. Your New Zealand Service Address changes. This is the address you provided us in your application as the address which we will send any legal document we need to serve on you. 	<p>Within 20 working days after the change</p>

Standard condition 6: dispose of the Asset or the Land if you do not comply with key special conditions	
<p>Some of the special conditions were key to the decision to give consent. If we consider you have failed to comply with one of those Special conditions in a material way we may require you to dispose of the Asset or the Land.</p> <p>If all or part of this standard condition 6 applies to a special condition, we have said so in that condition.</p> <p>We will give you written notice if we require you to dispose of the Asset or the Land. If the notice relates to the Land, you must follow the steps below. If the notice relates to the Asset, you must follow the steps below with all reasonable modifications having regard for the nature of the Asset, and subject to any agreement with us modifying those steps.</p>	
<p>Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.</p>	<p>Within six weeks of the date of our notice.</p>
<p>Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market.</p>	<p>Within six weeks of the date of our notice.</p>
<p>Dispose of the Land: dispose of the Land to a third party who is not your associate.</p>	<p>Within six months of our notice.</p>
<p>Offer without reserve: if you have not disposed of the Land within six months of our notice, offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.</p>	<p>Within nine months of our notice.</p>
<p>Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Land.</p>	<p>By the last day of every March, June, September and December after our notice or at any other time we require.</p>
<p>Report disposal to us: send us, in writing, evidence:</p> <p>(a) that you have disposed of the Land,</p>	<p>Within one month after the Land has been disposed of.</p>

<p>(b) of disposal (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor),</p> <p>(c) the purchaser is not your associate.</p>	
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Reporting conditions

We need information from you about how your investment plan is tracking so we can monitor your progress against the Conditions.

In addition to Settlement reporting (as set out in Standard Condition 2), you must provide the OIO with reports detailing the progress of the investment. The reports must:

- 1. be submitted via our [Webform](#) by these dates:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- 2. contain information about:

- a. your progress in implementing the special conditions (which can include photographs, maps or aerial imagery as evidence of compliance with relevant conditions),
- b. the amount of Development Spending into the Land on either developing the Te Puna Container Facility or the Business Park for each reporting period; and
- c. the introduction of New Technology in the Te Puna Container Facility for each reporting period.

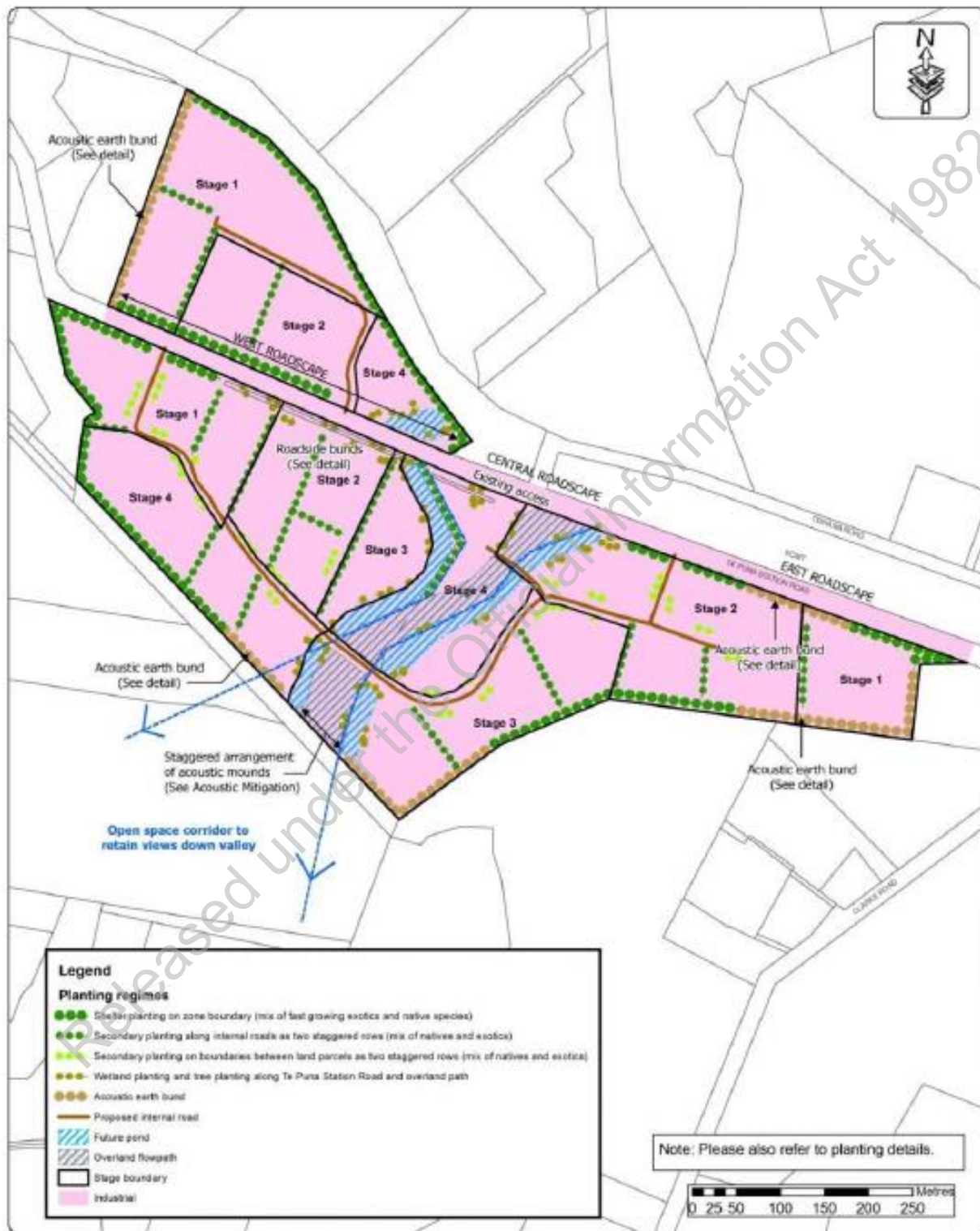
- 3. follow the format of the template annual report published on our website

If requested in writing by the OIO, the Consent Holder(s) must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:

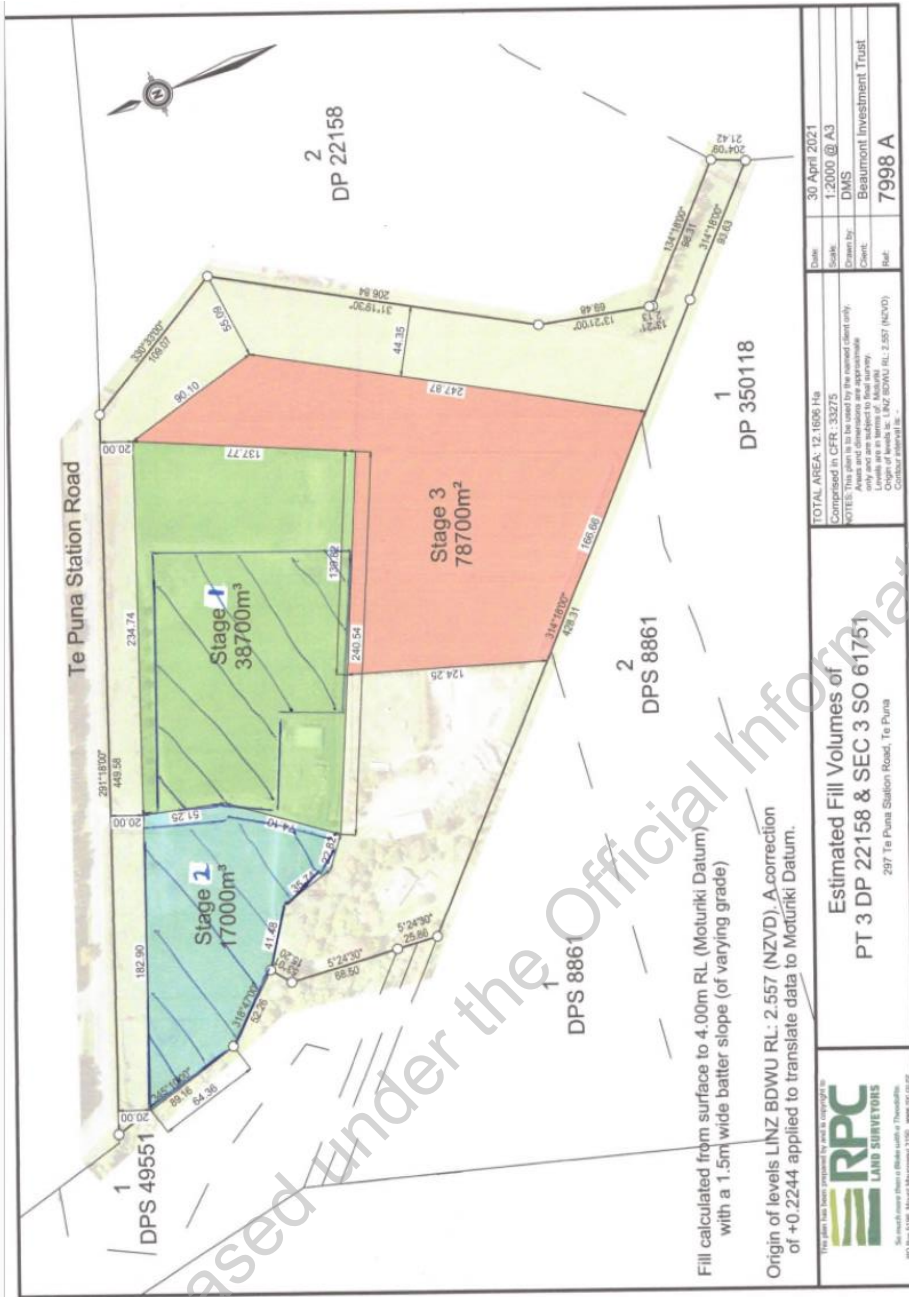
- a. the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the Consent was granted, or
- b. the conditions of this Consent.

Annexures

Annex one:



Annex two:



Released under the Official Information Act 1982